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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/087,953 | 03/05/2002 | Markus Beer | 87361.3380 | 5350 |
| 30734 | 7590 | 04/09/2004 | EXAMINER | |
| BAKER + HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304 | | | LAWRENCE JR, FRANK M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1724 | |

DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------|--------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/087,953 | BEER ET AL. | |
| | Examiner | Art Unit | |
| | Frank M. Lawrence | 1724 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 5, 2004 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6-8 and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Braun et al. (5,656,368).

4. Braun et al. ('368) teach a pleated fibrous filtration face mask comprising at least two layers that are point-bonded using ultrasonic or thermal welding in a grid pattern that makes up 0.5-15% of the filter surface (see figures 1, 2, 4, 12, col. 7, lines 20-43). The layers are welded between a horn and anvil of an ultrasonic welding apparatus with the second layer 21 facing the horn (see figure 7, col. 14, line 49 to col. 15, line 12). The pleated layer 12 can be a non-woven polypropylene or similar polymeric material and has an average pore size of less than 150 microns with a preferred range of 15-100 microns (see col. 8, lines 28-31, col. 9, lines 1-25), and the second layer 16 can comprise polypropylene and be a woven or non-woven web (see col. 10,

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lines 7-14). Further, the second layer preferably does not hinder fluid flow through the filter and has a lower pressure drop and is not more restrictive to fluid flow than the first layer (col. 9, line 60 to col. 10, line 6). The second layer is inherently capable of particle filtration because it is a non-woven or woven web.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braun et al. ('368) in view of Chapman (6,056,809).

7. Braun et al. ('368) disclose all of the limitations of the claim except that the woven filter fabric has a particle retention of 10-60 microns and that the first filter layer is the woven layer. Chapman ('809) discloses a multi-layer thermally-welded filter that comprises a woven polypropylene layer having a 10 micron porosity (col. 2, lines 27-57, col. 4, lines 45-67). It would have been obvious to one having ordinary skill in the art at the time of the invention to substitute a woven layer for the non-woven first filter layer of Braun et al. ('368) in order to provide a material having a high strength and particle filtering efficiency. It is submitted that the particle retention of each filter layer is a parameter that would have been routinely optimized by one having ordinary skill in the art at the time of the invention in order to provide any appropriate porosity based on the filtering application, taking into consideration contaminant size and the acceptable pressure drop across the filter. Where the first filter layer of Braun et al.

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('368) is selected to have a porosity at the lower end of the preferred range of 15-100 microns, the second layer would be selected to have a lower pressure drop, which can fall in a range of less than 10-60 microns.

Response to Arguments

8. Applicant's arguments filed March 5, 2004 have been fully considered but they are not persuasive. Applicant argues that neither Braun et al. nor Chapman disclose a filter medium having at least two filter layers, wherein the layers are essentially the same material and each layer has a different respective filtering property, as the amended independent claims now recite, however it is submitted that Braun et al. discloses a first layer (12) that can include a non-woven polypropylene and a second layer (16) that can include a woven or non-woven web of polypropylene. This arrangement anticipates the claim. Applicant also argues that the second layer of Braun et al. is a completely different material from the first layer because it includes sorbent granules, however the second layer referred to in the rejection consists of the polymeric layer (16) and does not include the granules (45) (see figure 2). In addition, the filter medium as recited in the claim does not exclude the presence of other materials in addition to the filter materials.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Lawrence whose telephone number is 571-272-1161. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank M. Lawrence
Primary Examiner
Art Unit 1724

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4-7-04